U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19195395

Date: OCT. 29, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a chemical engineer, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the substantial merit or national importance of the proposed endeavor or that the Petitioner is well positioned to advance it. Additionally, the Director found that the evidence did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner asserts that the Director erred in denying the petition.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998). Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

In his initial filing, the Petitioner submitted a copy of his bachelor of chemical engineering diploma issued by a Venezuelan university in December 2000. Although the Petitioner indicated on his Form ETA 750 Part B that he studied in his bachelor's degree program from 1992 to 2000, he did not provide any academic transcripts to susbtantiate the duration or course content of his studies. We reviewed the evaluation from the [redacted] Corporation, which contains the opinion of evaluator [redacted] concerning the equivalency of the Petitioner's foreign education and work experience. Initially, we note that the evaluation appears to have been prepared for a different petitioner as it states that the Petitioner has experience in "sports science, sailing, sports management, and related areas," which is entirely incongruent with the record. We further question whether the evaluation was prepared for another petitioner based upon the evaluator's use of regulatory language related to a different employment-based classification, that of H-1B nonimmigrants. Finally, the evaluation contains templated language found in numerous other evaluations submitted on behalf of unrelated petitioners, which suggests a lack of independent analysis of the Petitioner's specific qualifications. As USCIS does not accept equivalency evaluations of experience, we focus on the academic portion of the evaluation only.

The evaluator initially concluded that the mere completion of a foreign bachelor's degree in chemical engineering provides a sufficient basis for the conclusion that it is the equivalent of a U.S. bachelor's degree in chemical engineering. Subsequently, the evaluator stated that he based his conclusion on the reputation of the foreign university, the number of years of coursework, the nature of the coursework, the

grades attained, and the hours of academic work. Although the evaluator listed the information that he relied upon, he offered little analysis to support the conclusions. We do not know, for example, how the Petitioner's course work and academic hours actually compare to a U.S. education. Furthermore, the evaluator references information not contained in the record. Because the Petitioner has not submitted evidence of his courses, grades, and academic hours, we are unable to independently examine the basis for the evaluator's conclusions. We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. Matter of Sea, Inc., 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. Id. Here, we question the credibility of the evaluation because it contains language that appears unrelated to the Petitioner and his immigrant classification, in addition to conclusory statements not supported by analysis or other corroborating evidence in the record. Although the Director appeared to accept the Petitioner's foreign education as the equivalent of a U.S bachelor's degree, we conclude that the Petitioner has not met his burden in this regard.

The Director issued a Notice of Intent to Deny (NOID) which notified the Petitioner that the evidence did not establish five years of progressive, post-baccelaureate employment experience as well as clarified what specific evidence could establish this element of the advance degree professional classification. As part of his NOID response, the Petitioner provided numerous letters from supervisors and colleagues within [redacted] the Petitioner's current and longstanding employer. Although these letters describe the Petitioner's work and his various position titles throughout the years, the Director observed that the letters did not establish how the Petitioner's work was progressive in nature.

In addition, most of the letters are from the Petitioner's supervisors and colleagues, rather than from a representative authorized to make assertions concerning the duration and nature of the Petitioner's official employment history with [redacted] Although the colleagues and supervisors may be familiar with the Petitioner's role and experience while he worked directly alongside them, their assertions of the Petitioner's employment in other capacities, such as in different countries or with different subsidiaries or teams, are of little value as it cannot be determined how they would have direct knowledge of the Petitioner's employment dates and work experience. To illustrate, his former supervisors and colleagues do not appear to hold roles that would permit them access to the Petitioner's official [redacted] personnel records. Although [redacted], a manager in [redacted] listed the Petitioner's training completions, he did not demonstrate knowledge of the Petitioner's employment dates and work experience, nor did he provide analysis as to how the training represents progressively responsible work. To further illustrate, the Petitioner submitted a letter from a retired [redacted] technical manager who, as a former [redacted] employee, does not demonstrate that she has the current capacity to make official assertions on behalf of her former employer.

While the record contains a letter from HR Advisor [redacted] who appears to possess the authority and knowledge to provide credible information concerning the dates of the Petitioner's employment at [redacted] the letter does not contain information on the Petitioner's work experience or training such that the progressive nature of the Petitioner's post-baccalaureate work may be estbalished. The letter states that the Petitioner is a current employee, and it also contains his employment start date and the title of his current position, but it does not contain a specific description of the duties performed by the Petitioner or of the training received such that the progressive nature of the Petitioner's work can be established. We acknowledge the Petitioner's argument on appeal that his increased salary earnings over

the years are evidence of the progressive nature of his work; however the record does not contain sufficient corroborating evidence regarding the Petitioner's salary over the years. Even if we had such documentation, this evidence would still be insufficient in establishing how the Petitioner's work, as opposed to his earnings, is progressive in nature. While we acknowledge that the evidence demonstrates continuous work, it is insufficient to simply submit documents without demonstrating how the work is actually progressive.

Due to these evidentiary deficiencies, the record does not persuasively establish that the Petitioner is a member of the professions with an advanced degree. Further, the Petitioner has not asserted his eligibility as an individual of exceptional ability. Accordingly, we conclude that the evidence does not establish that the Petitioner meets the regulatory criteria for classification as a member of the professions holding an advanced degree or that he is an individual of exceptional ability.

B. National Importance

As the Petitioner has not established eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot. The waiver is available only to foreign workers who otherwise qualify for classification under section 203(b)(2)(A) of the Act. However, because the Director made additional eligibility findings and the Petitioner alleges error in the Director's decision, we will provide further analysis using the Dhanasar framework. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

As a preliminary matter, the Petitioner argues that the Director did not properly analyze the Petitioner's case in comparison to the standard set by Dhanasar. Regarding the national importance standard specifically, the Petitioner argues that the Director must analyze the impact and national importance of his proposed endeavor in comparison to the impact and national importance of Dr. Dhanasar's proposed endeavor. The Petitioner asserts that the Director is legally required to compare the impact of the Petitioner with that of Dr. Dhanasar and cites to the concept of precedent decisions in support. We acknowledge that Dhanasar is a precedent decision and further acknowledge the concept of precedent decisions and their controlling nature; however, the Petitioner has cited to no legal authority for a one-to-one comparison of two petitioners operating in vastly different fields of endeavor. Dhanasar establishes an analytical framework with which to examine national interest waiver cases, but it does mandate or even suggest that a side-by-side comparison of individual petitioners and endeavors is required. The Petitioner misunderstands the nature of precedential decisions when he concludes that approvals are required for any petitioner with more impact than Dr. Dhanasar. While we utilize the analytical framework set forth in Dhanasar, the record contains only the Petitioner's evidence, facts, field of endeavor, and explanations of the proposed scope of work, not Dr. Dhanasar's. Despite counsel's insistence that a different standard be applied, the Petitioner always bears the burden to establish his own eligibility by a preponderance of the evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner provided significant information concerning his past work, such as with [redacted] technologies, but offered little information concerning the proposed endeavor. He provided information to suggest that he would research, such as by claiming to be a top researcher, that the continued dissemination of his work would benefit the nation, and that his paystubs evidence that he has support for his ongoing research, but he did not directly state that his proposed endeavor involves research activities

or what his future research topics would be. Although the Form I-140 requests that the Petitioner provide his proposed employment job title and duty description, he did not complete this section of the form. From the initial filing, the Petitioner's most direct statement concerning his proposed endeavor was that he "seeks employment in the field of Advanced Chemical Engineering." Accordingly, the Director issued a NOID which notified the Petitioner of the evidentiary deficiencies in the record concerning his proposed endeavor as well as that the evidence did not establish its substantial merit or national importance.

In response, the Petitioner stated that he will "continue working in the field of Advanced Chemical Engineering [redacted]." He then continued to reference his past and current work without further defining his proposed endeavor except to add that he intends to "remain working for [redacted]." Although we acknowledge his claim that he currently works on [redacted] technologies, procedures, and processes and that he designs and produces technical guides for large-scale projects, the Petitioner did not directly state what his future work would involve. Even if we were to assume that the Petitioner's current work will also comprise his proposed endeavor, we would not have sufficient information concerning which specific [redacted] technologies he would work with or which specific large-scale projects his endeavor will involve. The record contains little other direct evidence of the Petitioner's proposed endeavor.

The Petitioner's retired colleague, [redacted], a former resource manager for [redacted], provided additional indirect information concerning the Petitioner's endeavor in his letter of support. Here, the additional information concerning the endeavor comes only secondhand, as the Petitioner himself has not claimed his proposed endeavor involves the specific activities identified in [redacted] letter. According to [redacted] the Petitioner's endeavor "is the development of new processes and techniques for the application of novel [redacted] Technology." [redacted] then launched into an explanation of the Petitioner's current and past work without further explanation of the Petitioner's proposed endeavor. Further confusing matters, [redacted] indicated that the Petitioner's work involves teaching younger engineers, which [redacted] cited as a reason for the national importance of the Petitioner's work. As such, it appears that the proposed endeavor may involve teaching. Another letter submitted with the NOID response includes the opinion of [redacted], a [redacted] professional, who discussed the benefits of research and development to the United States. Although the letter does not directly claim that the Petitioner will perform research, it is not apparent why [redacted] would engage in such a discussion if the Petitioner's activities did not involve research.

To summarize the direct and indirect evidence concerning the proposed endeavor, it appears as though the Petitioner will: (1) seek employment as a chemical engineer; (2) continue his current employment with [redacted] (3) develop new processes and techniques for the application of novel [redacted] technology; and (4) may possibly teach and research. In Dhanasar, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." Id. at 889. Based on the information provided, the Petitioner has not clearly identified his proposed endeavor.

The Director determined that that the evidence was insufficient to establish that the Petitioner's proposed endeavor has substantial merit or national importance. We agree. As stated in the Director's decision, the record contains insufficient evidence to suggest that the Petitioner's proposal to seek or continue employment in chemical engineering holds substantial merit. On appeal, the Petitioner alleges legal error in the Director's determination concerning substantial merit, but he does not provide legal support for such a claim. Instead, the Petitioner compares immigration adjudications under previous and current

presidential administrations, as well as observes that in the history of national interest waivers, no field has been determined to be without substantial merit. As the Director noted, the Petitioner confuses the field, which may have substantial merit, with the substantial merit of the proposed endeavor. Here, the proposed endeavor has not been clearly defined nor has the Petitioner submitted persuasive evidence to support a finding of substantial merit. The Petitioner bears the burden to affirmatively establish eligibility under the Dhansar framework, of which substantial merit is one piece.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. The record does not demonstrate that the proposed endeavor, to the extent that it has been explained, will extend beyond the Petitioner's employer and clients or that the Petitioner's operations broadly impact the field of chemical engineering or the [redacted] industry at a level commensurate with national importance. Similarly, in Dhanasar, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. See Dhanasar, 26 I&N Dec. at 893. The Petitioner argued that the [redacted] industry impacts the U.S. economy and advances in this field are of immense significance. However, as previously explained above as well as in the Director's decision, the field or industry is not the subject of this analysis, but rather the proposed endeavor. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Id. at 889.

In Dhanasar, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. The Petitioner has not explained what specific benefits his proposed endeavor will add, nor has he explained what "advances" his proposed endeavor will make in the industry. The Petitioner submitted evidence of reports he authored or performed testing for and studies he facilitated, but we have little indication that these documents were disseminated to anyone outside [redacted] or beyond [redacted] own projects. For instance, the Petitioner pointed out his influence in China, but in examining the relevant email chain, the guidance the Petitioner provided was to another [redacted] employee located in China. Even if evidence of dissemination was provided, we would still find this evidence insufficient because dissemination alone would not establish the impact of the Petitioner's work in the field or on the nation. We do not know, for example, if other chemical engineers in the [redacted] industry are aware of this work or whether this work has positively influenced other companies. Accordingly, it cannot be concluded that the Petitioner's work in the proposed endeavor would have impact that extends beyond his current employer. Similarly, the claims of "$$$ millions of dollars of impact in the real world!" have not been substantiated. For instance, the record contains no studies, analysis, articles, or statistics linking the Petitioner's work to millions of dollars of impact or any national economic benefits. As such, we have little basis to conclude that the Petitioner's work has created millions of dollars of impact.

The Petitioner's recommendation letters contain information on his past work and his achievements for [redacted] but offer little information concerning his future proposed endeavor. Although the letters contain information on how the Petitioner's work has positively impacted his employer and its clients, the authors do not persuasively address or provide support for a finding that the Petitioner's future work will broadly impact the field. Additionally, the authors praise the Petitioner's experience, personal and professional achievements within [redacted] and his expertise. In general, both the Petitioner and

these authors confuse the Petitioner's merit with the merit of the proposed endeavor. The Petitioner's expertise relates to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under *Dhanasar's* first prong.

Finally, the Petitioner submitted evidence of co-authorship on approximately four articles, the most recent of which appears to have been published in 2014, four years prior to the filing of the instant petition. Four co-authored articles spanning an approximately twenty-year career as a chemical engineer suggests that the Petitioner's work is not primarily focused on writing and publishing. Furthermore, the citation record, which consist of a collective five citations, does not suggest an influence in the field commensurate with national importance. Although the Petitioner received an acknowledgement for his contribution to another writer's article, such an acknowledgement is not a citation to the Petitioner's work. Similarly, an acknowledgement of the Petitioner in someone else's patent is not indicative of how the Petitioner's work's influences or impacts in the field. Based upon the evidence provided, the Petitioner's past publication and citation history does not suggest that his proposed endeavor, if it includes research, would have an impact that rises to the level of national importance.

Because the documentation in the record does not establish that the Petitioner meets the requirements of the underlying classification nor does it establish that the Petitioner's proposed endeavor is of substantial merit or national importance as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not demonstrated that he qualifies for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability under section 203(b)(2)(A) of the Act. In addition, the evidence has not shown that the proposed endeavor is of substantial merit or national importance. As such, he has not established that a waiver of the job offer and labor certification would be in the national interest of the United States. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Otiende, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.